

Judge: Timothy W. Dore
Chapter: 13
Hearing Date: November 01, 2017
Hearing Time: 9:30 a.m.
Hearing Location:
U.S. Bankruptcy Court
700 Stewart St #8106
Seattle, WA 98101
Response Date: October 25, 2017

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

ANTONIO CRUZ-ALVARADO and
ERNESTINA CRUZ,
Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 17-12457-TWD

NOTICE OF OBJECTION TO PROOF
OF CLAIM AND HEARING

PLEASE TAKE NOTICE that the Chapter 13 Trustee's **Objection to Proof of Claim No. 3 of Cavalry SPV I, LLC** IS SET FOR HEARING as follows:

Judge: Timothy W. Dore
Place: U.S. Bankruptcy Court
700 Stewart St #8106
Seattle, WA 98101
Date: November 01, 2017
Time: 9:30 a.m.

IF YOU OPPOSE the objection, you must file your **written response** with the Court Clerk NOT LATER THAN THE RESPONSE DATE, which is **October 25, 2017**.

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE, and strike the hearing.

Date: September 14, 2017

/s/ Jason Wilson-Aguilar, WSBA #33582 for
K. MICHAEL FITZGERALD
Chapter 13 Trustee

Chapter 13 Trustee
600 University St. #2200
Seattle, WA 98101-4100
(206) 624-5124 FAX 624-5282

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

ANTONIO CRUZ-ALVARADO and
ERNESTINA CRUZ,
Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 17-12457-TWD

OBJECTION TO PROOF OF CLAIM
NO. 3 OF CAVALRY SPV I, LLC

K. Michael Fitzgerald, Chapter 13 Trustee, objects to the Proof of Claim (ECF Claim No. 3) of Cavalry SPV I, LLC as assignee of Bank of America / FIA Card Services, N.A. (Claimant):

Based on information and belief, Claimant's proof of claim is barred by the applicable statute of limitations because the last payment / transaction date was July 6, 2009. Wash. Rev. Code § 4.16.040. In the Ninth Circuit, statute of limitations periods are generally governed by local law, even if the substantive law of another jurisdiction applies. *Des Brisay v. Goldfield Corp.*, 637 F.2d 680, 682 (9th Cir. 1981).

While federal courts will generally allow the parties to select the law they want to govern, a choice of law provision would need to specifically include a statute of limitations provision in order for that limitation to apply. *PNC Bank v. Sterba (In re Sterba)*, 852 F.3d 1175, 1178 (9th Cir. 2017). Unless there is an exceptional circumstance, the forum in which the action is brought will apply its own statute of limitations. *Id.* at 1179. Claimant did not include the promissory note (or other basis of the obligation) on which the claim is based, so the Trustee presumes that the six year statute of limitations in Washington State applies. Even considering any potential tolling during

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1 the debtors' Chapter 7 Case No. 09-20355-KAO,¹ Claimant's claim would still be time-barred
2 based on a six year statute of limitations.

3 More significantly, given the basis of the claim appears to pre-date the debtors' Chapter 7
4 case and discharge, the debt was apparently discharged. Claimant appears to be attempting to
5 collect on a discharged debt, as the last transaction / payment date of July 6, 2009 precedes the
6 debtors' October 5, 2009 Chapter 7 petition date and subsequent discharge.

7 WHEREFORE, the Chapter 13 Trustee requests that the Court disallow the proof of claim
8 (ECF Claim No. 3) of Cavalry SPV I, LLC as assignee of Bank of America / FIA Card Services,
9 N.A.

10 Dated this 14th day of September 2017

11 /s/ Jason Wilson-Aguilar, WSBA #33582 for
12 K. MICHAEL FITZGERALD
13 Chapter 13 Trustee
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28 ¹ The debtors filed Chapter 7 Bankruptcy Case No. 09-20355-KAO on October 5, 2009, they received a discharge
on February 2, 2010 and the Court closed the case on February 18, 2010.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

ANTONIO CRUZ-ALVARADO and
ERNESTINA CRUZ,
Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 17-12457-TWD

Proposed
ORDER DISALLOWING PROOF OF
CLAIM NO. 3 OF CAVALRY SPV I,
LLC

THIS MATTER having come before the Court on the Chapter 13 Trustee's Objection to
Proof of Claim No. 3 of Cavalry SPV I, LLC as assignee of Bank of America / FIA Card Services,
N.A., proper notice having been given, and for cause shown, it is

ORDERED that:

- 1) The Trustee's Objection to Proof of Claim is sustained; and
- 2) The Proof of Claim (ECF Claim No. 3) of Cavalry SPV I, LLC as assignee of Bank
of America / FIA Card Services, N.A. is disallowed.

// /End of Order/ //

Presented by:

/s/ K. Michael Fitzgerald
K. MICHAEL FITZGERALD, WSBA #8115
Chapter 13 Trustee
600 University St. #2200
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